

DISCIPLINARY ACTION

Consensual One-Year Private Probation - Board Case No. 30, 2003. Date of

Sanction: March 15, 2004. A panel of the Preliminary Review Committee of the Board on Professional Responsibility (“PRC”) offered a one-year private probation to a lawyer as a result of its finding that there was probable cause to conclude that the lawyer had violated Rules 1.15(b), 1.15(d), 5.3, and 8.4(d) of the Delaware Lawyers’ Rules of Professional Conduct (“Rules”). The lawyer accepted the private probation and admitted violations of Rules 1.15(b), 1.15(d), 5.3, and 8.4(d) by failing to timely disburse funds from the lawyer’s escrow account resulting in the accrual of unidentified client funds; failing to ensure that the escrow account balance was reconciled to the bank balance, and failing to accurately report same on the lawyer’s Certificate of Compliance filed with the Supreme Court, and failing to adequately supervise an employee/bookkeeper, which resulted in the aforementioned problems.

The lawyer was the managing partner responsible for the firm’s books and records during the relevant period. Beginning in 1992, the bookkeeper responsible for maintaining the escrow account allowed funds to accrue in this account (unidentified funds). The lawyer did not properly review the bookkeeper’s records or the lawyer would have been aware that these funds were accruing. The lawyer failed to accurately represent that these unidentified funds existed on the lawyer’s Certificates of Compliance filed with the Supreme Court from 1996 through 2002. In 2002, the firm became aware that these unidentified funds existed and promptly reported this to the Office of Disciplinary Counsel. An audit performed in 2002 by the Lawyer’s Fund for Client Protection revealed that the total of unidentified funds was \$19,411.04. The firm hired an outside CPA firm to review its records and to identify the funds. The firm notified the clients whose funds had been identified advising them of the amount to be disbursed, including interest for the period of time for which the firm had held them. The lawyer correctly identified this deficiency on the lawyer’s 2003 Certificate.

The PRC considered the lawyer’s lack of disciplinary record; cooperative attitude and full and free disclosure to the disciplinary authorities, in particular, the self-report to ODC; the

absence of a dishonest or selfish motive; the timely good faith effort to rectify the consequences of the misconduct; and the lawyer's remorse for the misconduct, as factors in mitigation of a harsher sanction. In aggravation, the PRC considered the lawyer's substantial experience in the practice of law; the pattern of misconduct; and multiple offenses over a period of time.

The lawyer was required to reimburse the ODC and the LFCP for the costs of its investigation and to undergo a follow-up compliance audit eleven months from the date of the sanction. Pursuant to Delaware Lawyers' Rule of Disciplinary Procedure 9(b)(4)(D), if the lawyer is not found, by a panel of the PRC, to have engaged in further professional misconduct during the one-year probationary period, the probation will be removed from the lawyer's formal disciplinary record and cannot be used in any subsequent disciplinary proceedings.